IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 317 OF 2005

THE VAGH NAGAR CO-OPERATIVE HOUSING SOCIETY LTD.,THROUGH ITS SECRETARY AND ANR., ...Petitioners

Versus

THE COLLECTOR AND 2 ORS., ...Respondents

Shri R. G. Ramani, Advocate for the petitioner.

Shri S. Vahidulla, Addl. Govt. Advocate for the respondents.

Coram:- R. M. LODHA &
N. A. BRITTO, JJ.

Date:- 30th August, 2005

P.C.

A preliminary objection is raised by the respondents for entertaining this writ petition. The objection is that the impugned order dated 27.8.2004 passed by the Court of the Collector, North Goa, Panaji is appealable under sub-section (4) of Section 47A that has been inserted in the Indian Stamp Act, 1899 by the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1968.

2. Section 47A inserted in the Indian Stamp Act, 1899 by the Amendment Act of 1968 reads thus :

> " 47 A. Instruments of conveyance, etc. under-valued how to be dealt with. - (1) If the registering officer appointed under the Registration Act, 1908 (Central Act 16 of 1908) while registering any instrument of conveyance, exchange or gift has reason to believe that the market value of the property which is the subject matter of conveyance, exchange or gift

has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1) the Collector shall, after giving the parties as reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made undr this Act, determine the market value of the property which is the suject-matter of conveyance exchange or gift and the duty as aforesaid, and, therunpon, the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may on his own motion or otherwise, within two years from the date of registration of any instrument of conveyance, exchange or gift not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property as set forth in such instrument, which is the subject-matter of conveyance, exchange or gift and the duty payable thereon and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2) and, thereupon, the difference, if any, in the amount of duty, shall be payble by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp (Goa, Daman and Diu Amendment) Act,

1975.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to the Civil Judge, Senior Division and all such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rule made under this Act.

Explanation. - For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the Civil Judge, Senior Division, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange or gift.".

3. From the impugned order passed by the Collector, it is apparent that he dealt with the matter on the reference made by the Civil Registrar cum Sub-Registrar. The power exercised by the Collector, North Goa, Panaji in passing the impugned order is, thus, clearly under Section 47A (2) on the reference made by the Civil Registrar cum Sub-Registrar to him under sub-section (1) of Section 47A. Sub-section (4) of Section 47A provides for a remedy of appeal to the Civil Judge, Sr. Division by any aggrieved person upset by the order of the Collector. It is, thus, clear that the impugned order is appealable. The learned Counsel for the petitioner, however, submitted that for want of any rules framed under the Act, the petitioner may not in a position to file an appeal.

4. In our view, merely because Rules having not been framed under the Act, there should not be any impediment in filing an appeal under sub-section (4) against the order passed by the Collector under sub-section (2).

5. We are, accordingly, not inclined to entertain the writ petition

in view of the adequate and efficacious remedy of appeal available to the petitioner. We clarify that if the appeal is preferred by the petitioner under sub-section (4) of Section 47A within 30 days from today to the Civil Judge, Senior Division, the appeal shall be entertained and heard on merits by the Civil Judge, Senior Division.

6. With the aforesaid discussions, the writ petition stands disposed of.

R. M. LODHA, J.

N. A. BRITTO, J.